



Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984)
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

MB Docket No. 05-311

COMMENTS OF THE CITY OF WHITE

These Comments are filed by the City of White, South Dakota in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the City of White, South Dakota believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

In our community a cable "franchise" is termed both as a cable franchise and as a cable television system ordinance. The Federal Cable Act refers to this as a "franchise" so we will use that term in these comments. Also, many communities have a cable ordinance which operates in conjunction with the franchise agreement, the terms of which are often negotiated with the cable company in conjunction with the franchise agreement. These documents collectively referred to as the "franchise" below.

Cable Franchising in Our Community

Community Information

The City of White is a city with a population of 530. Our franchised cable providers are Mediacom Minnesota LLC and Interstate Telecommunications Cooperative, Inc. Our community has negotiated cable franchises since 1976.

Our Current Franchise

Our current franchise with Mediacom Minnesota LLC began on September 4, 2000 and expires on April 3, 2014. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

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Our current franchise with Interstate Telecommunications Cooperative, Inc. began on March 1, 2003 and expires on February 29, 2008. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operators to pay a franchise fee to the city in the amount of 3% of the cable operator's annual gross subscriber revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

Our franchise contains the following requirements regarding emergency alerts: In case of any disaster or emergency the Grantee shall make available its facilities to the City for emergency use during the disaster or emergency upon request of the City Council. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency. An example of when this function has been helpful is the following: A child came up missing during a winter blizzard, the notice of alert was announced over the cable television system, the child was found safe at a neighbor's home.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. The grantee shall, at all times, operate and maintain its Cable Television System in full compliance with the rules, regulations and standards of the FCC and shall be subject to all lawful exercise of the police power by the City and to any such reasonable regulations as the City shall hereinafter provide. The grantee shall provide for and render safe, adequate and prompt service for its facilities and interrupt service only for good cause and for the shortest possible time during periods of minimum use, and insofar as possible, such interruptions of service shall be preceded by notice. Grantee shall at all times maintain on file with the City Finance Officer a schedule setting forth all rates and charges to be made to subscribers for basic CATV service, including installation charge, any changes in rates shall be filed in writing at least 30 days in advance of proposed rate change. Complaints regarding service shall first be directed to Grantee's office. Should Grantee fail to satisfy the complaint, it may then be directed to the City Finance Officer for investigation and referral to the City Council for action if complaint is not resolved.

Our franchise requires that the cable operator currently provide service to the following areas of our community: Present territorial limits of the City and to any area annexed thereto during the term of the franchise ordinance. Grantee shall not be required to service residents of newly annexed areas of the City or to extend service to new subscribers in areas within the City limits unless the area has a population of fifty (50) or more homes per linear mile of cable system except upon payment by such residents of the capital costs incurred by the Grantee in bringing service to such areas or individual homes adjoining, but outside the City limits, that may be served from its existing facilities. Grantee may negotiate directly with such subscribers the amount to be charged for the bringing of the service to the subscriber.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements: It shall be the policy of the City to liberally amend this franchise upon application of the Grantee when necessary to enable the Grantee to take advantage of any developments in the field of transmission of digital audio, radio and television signals which will afford it an opportunity to more economically, effectively or efficiently serve its subscribers. However, this section shall not be construed to require the City to make any amendment or to prohibit it from unilaterally changing its policy stated herein.

Our franchise contains a "most-favored-nations" provision which states the following: The grantee shall not discriminate in rates between customers of the same category except to the extent permitted by the Cable Communications Policy Act of 1984, as amended and FCC regulations.

Our franchise contains the following insurance and bonding requirements: Grantee shall keep in effect the following types of insurance coverage at all times (a) Worker's Compensation Insurance, (b) Property Damage Liability Insurance to the extent of \$500,000 each as to any person or as to any one accident and Personal Injury Liability Insurance to the extent of \$500,000 each as to any one person or as to any one accident, and (c) grantee shall indemnify, protect, and save harmless the City from and against all losses both to property or bodily injury or death. Grantee shall file an annual financial report with the City within 90 days after the expiration of its fiscal year. No performance bond required.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is not required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: Modification of Obligations – In addition to any other remedies provided by law or regulation, Grantee's obligations under this ordinance may be modified, at its request, in accordance with Section 625 of Cable Communications Policy Act of 1984 as it now exists or as hereafter amended and Severability - If any clause, phrase, section, sentence or subsection of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent

jurisdiction, or is preempted or superceded by FCC regulation, then such portion shall be deemed a distinct, independent and separate provision and such holding shall not affect the validity of the remaining portions thereof.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance: The City of White grants franchises in the form of Ordinance. South Dakota Codified Law 9-19-7, Reading, passage and publication of ordinances states the title of all ordinances shall be read twice with at least five days intervening between the first and second reading. The ordinance shall be signed, filed and published once in the official newspaper, and twenty days after the completed publication of such notice, unless the referendum shall have been invoked, such ordinance shall become effective

Competitive Cable Systems

- Our community granted a competitive franchise to Interstate Telecommunications Cooperative, Inc. a cable overbuilder, in 2003 and that provider is providing service in my community today.
The competitive franchise applicant was very cooperative in agreeing to a franchise comparable to the incumbent franchise.

Conclusions

The local cable franchising process functions well in the City of White. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of White therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

City of White, South Dakota

By:

A handwritten signature in black ink, appearing to read "Chris Willmott", written over a horizontal line.

Chris Willmott, Mayor

cc: NATOA, info@natoa.org
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